shall likewise be taxed. Plaintiff, United States District Judge, paid income tax on his judicial salary, under protest, and sued deputy collector for return of the tax. United States Constitution, Art. 3, Sec. 1, provides compensation of judges of Supreme and inferior courts "shall not be diminished during their continuance in office." *Held*, such tax does not violate this constitutional provision. *Evans* v. *Gore* (D. C., W. D. Ky., 1919), 262 Fed. 550.

This case presents a very novel question, which seems to be correctly decided, although there is apparently no decision directly in point. Clearly this is a general tax on incomes, including the judicial salary, and is not directed against salaries as such. It merely incidentally falls on salaries, and so is no diminution within the meaning of the constitutional provision. The constitutional provision does not exempt federal judges generally from taxation, and each must bear his share of that burden which the United States sees fit to impose upon its citizens for its maintenance. To support this decision we have only to realize that the purpose and practical effect of the constitutional provision is conserved,—the absolute independence of the judiciary from the legislative branch of the government is not impaired, inasmuch as the amount of compensation received by the judges, in the first instance, is not diminished by the legislature. This tax, being generally on all incomes, is not such a diminution of judges' salaries as to bring the judiciary within reach of the legislative department, nor would it cause any suspicion of influence that might tend to shape or warp their decisions. The amount of income received, in the form of judicial salary, remains the same throughout, even though part of this income must later be paid back to the government in the form of taxes. The judge's claim for salary remains unimpaired, and he receives a salary the same in amount as prior to this tax, inasmuch as the amount of the tax is not deducted from the salary before it is paid to the judge. The government's claim for taxes, against all citizens alike, cannot be resisted, in the absence of exemption, even by federal judges. This tax does not render the judiciary subservient to another branch of the government, but merely to the government itself, which, in its supreme exercise of sovereignty, has the right to subject all its citizens to like and equal burdens, duties, and taxes. See contrary view, 13 OPIN. ATTY. GEN. 161, and BLACK, TREATISE ON FEDERAL TAXES, Sec. 16, which seems to carry little weight since the adoption of the Sixteenth Amendment to the Constitution providing "Congress shall have power to lay and collect taxes on incomes, from whatever source derived."

CONSTITUTIONAL LAW—REFERENDUM AS TO AMENDMENTS OF FEDERAL CONSTITUTION.—In November, 1918, the people of Ohio adopted an amendment to the state constitution providing that "The people also reserve to themselves the legislative power of the referendum on the action of the General Assembly ratifying any proposed amendment to the Constitution of the United States." The legislature of Ohio having voted approval of the proposed Eighteenth (Prohibition) Amendment, a petition for referendum was filed with the secretary of state. Plaintiff thereupon filed a petition for injunction to restrain the defendant, the secretary of state, from spend-

ing any public money in the submission of such matter to the vote of the people *Held,* a demurrer to the petition was properly sustained. *Hawke* v. *Smith, Secretary of State* (Ohio, 1919), 126 N. E. 400.

In discussing this general question in 18 MICH. L. REV. 51, it was said that two questions were bound to arise in this connection. "Does the language of Article V of the National Constitution make the matter of ratification or rejection of proposed amendments a function of the *'legislature,'* in the usual sense of that word? This, of course, is a federal question, and until passed on by the United States Supreme Court must be considered as open. The second questions is: Does the state provision for referendum cover the reference of acts of the legislature such as are consummated in ratifying a proposed amendment? This obviously is a local question, and the Supreme Court will not examine into the soundness of the conclusion of the state court. *Davis* v. *Ohio,* 241 U. S. 565." In view of the amendment to the Ohio constitution above quoted, the second question was not involved in the principal case. In the Colorado and Michigan cases cited below, it was held that the state provisions for referendum did not extend to approvals or rejections of proposed amendments. The court concluded that "legislature" in Art. V of the federal Constitution does not mean the legislative *body,* thus agreeing with the Washington court in *State ex rel. Mullen* v. *Howell,* 181 Pac. 920, and disagreeing with the Maine court in *Re Opinion of the Justices,* 107 Atl. 673. The Maine case is approved in *Prior* v. *Noland,* (Colo., 1920) 188 Pac. 729. In the principal case the court felt very strongly the supposed weight of *Davis* v. *Ohio,* 241 U. S. 565 (Wanamaker, J., in concurring opinion considered the decision conclusive), entirely misconceiving what was really involved and decided in that case. See 18 MICH. L. REV. 52, *et seq.,* where the character of the question there before the Supreme Court is pointed out. In *Decher* v. *Secretary of State,* (Mich., Apr. 10, 1920) the court avoided this error. In *Ex parte Dillon,* 262 Fed. 563 (1920), Rudkin, D. J., concluded that the principal case was incorrectly decided, saying: "Had the resolution (of Congress) in this case provided that the amendment should be ratified by the people of the several states by direct vote, such provision would be clearly in derogation of the Constitution and void, and what Congress could not do it is needless to say the several states cannot do, because full power over the matter is conferred upon the former and denied to the latter."

CONSTITUTIONAL LAW—TAXATION—EDUCATIONAL BONUS LAW FOR A PUBLIC PURPOSE.—The Legislature of Wisconsin provided (chapter 5, Laws of 1919, Special Session) for a bonus of thirty dollars per month to soldiers, sailors and nurses who served in the late war with Germany and Austria, while in regular attendance as a student of any of certain designated institutions. This provision is stated to be in lieu of the soldier's bonus provided for in chapter 667 of the Laws of 1919. The benefits of the act extend to those who were residents of Wisconsin at the time of their induction into the service and who, after being discharged, desire to continue their education in any of the public schools and colleges named. The expenses of